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EXCEPTIONS IN A PROHIBITION LAW—PROBLEMS OF ENFORCEMENT

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When the people of North Dakota, in 1889, adopted their constitution, the manufacture and sale of intoxicating liquor *as a beverage* were forever prohibited. The legislature during its first session, passed what is commonly known as the Prohibitory Law, which, among other things, provided a procedure for securing proper enforcement—the constitution itself not being self-executing. The first section of the prohibitory law embodies, in substance, the language of the constitution against the sale as a beverage, and adds the following:

Provided, That registered pharmacists under the law of this state may sell intoxicating liquors for medicinal, mechanical, scientific, and wine for sacramental purposes, as hereinbefore provided.

This permission to sell for “excepted purposes” was a recognition by the legislature that the evils coming from the sale of intoxicating liquors did not arise where the use was for medicinal, mechanical, scientific or sacramental purposes. It is of the sale for the “excepted purpose” that I am asked to write.

There can be found those who would not have any dealings in intoxicating liquors whatsoever; others believe them to have their proper and necessary use in the arts, sciences, and for medicinal purposes. Not a few, also, conscientiously believe that a fermented wine is necessary for sacramental purposes. A distinct recognition of the right of the people to determine this question of the use of liquors for non-beverage purposes induced the legislature to add the proviso clause. The legislature was here confronted with a very delicate question as to the method of conducting sales for the excepted purposes. Experience in dealing with the liquor traffic has taught legislators that evasions of law will constantly occur, nowhere possibly more than among those engaged in selling liquor for beverage purposes. Being conscious

of the fact that the efficiency of the law might be destroyed by evasions, it was provided that no one but a registered pharmacist could sell, and around the sale by pharmacists were thrown a great many safeguards.

As one of the committee having in charge the preparation of the law, I know that this question received a good deal of attention. The prohibitory liquor law of North Dakota is copied quite largely from the law of the State of Kansas. After considering the question of the sale of liquor for the excepted purposes upon prescription, and being advised that such a plan had been adopted in Kansas with no great measure of success; and further being informed that the law of Kansas as it then stood was giving fair satisfaction, it was concluded to adopt the Kansas method in its entirety, and we have been living under that system now for the past nineteen years.

The theory of this plan, it would seem, is that the responsibility must be placed in the hands of some trusted person. Most of the sales in good faith would be for medicinal purposes, and it was thought that no one would be better qualified or could be better trusted than a regularly licensed pharmacist. Even he could not, under this system, secure a permit unless he was vouched for by eighty per cent of the reputable freeholders having the qualifications of electors in his town or ward, and seventy per cent of the reputable women therein over the age twenty-one years. His conduct, also, in the handling of liquor, the making of reports to the county court, and the publicity with reference to them required, all seemed to be of value in preventing unlawful sales. This plan also required the person securing the liquor to make affidavit of the purpose for which it was purchased, and prescribes the usual penalties for perjury in case of false affidavit. I may say that in this state there are large numbers of pharmacists who honestly and in good faith are trying to carry out the true spirit of the law. In a recent conversation which I had with the president of the pharmaceutical association, he told me that the association, as a body, was interested in the obedience to this law to the extent that it was itself investigating violations thereof, and that the association proposed to add severe penalties in case of its infraction. He admitted that there were quite a number of persons who had become pharmacists and had started drug stores with the general

aim of selling intoxicating liquors as a beverage, clearly in evasion of law.

It will be noted here that druggists are not permitted to sell beer, so that their delinquencies if any occur, are connected with the sale of whiskey, brandy, alcohol, and other spirituous liquors. The love of gain has induced many pharmacists to enter a systematic method of sales for beverage purposes, and it now becomes a practical question whether under all the conditions, this plan is the best calculated to reduce the unlawful sale for the excepted purpose to the minimum. Or, is there some other system by which obedience to law can be better maintained?

After watching conditions in this state with some care, for the past twenty-seven years, I am of the opinion that with certain amendments to our statute the present system is perhaps as good as any which can be adopted. Convinced that the great body of pharmacists are opposed to the violation of law, and that we have to deal only with a criminal class who are operating under the cloak of their membership in that association, I believe that if more stringent methods are required, first, to secure the permit, and, second, with reference to the returns thereon, better, and I may say more satisfactory results will be obtained.

Under the present law, permits are granted in any county by the county judge. It stands to reason that if a majority of the people in any county are in favor of the violation of the law, they will elect a county judge who would be willing to grant a permit to irresponsible persons, and will not be overly zealous in requiring proper returns of the sales to be made. To avoid this difficulty, it would be better to have the permits granted by the district judge; no permit to extend for a longer period than two years. During those two years the permit should be subject to revocation after a hearing had and a showing made that the pharmacist was not in good faith living up to the terms of the law. In case of a renewal of his permit he should be required to come before the court with all the records of his sales during the preceding period, and affirmatively show to the court that he has in good faith carried out the spirit of the law. The burden of showing such good faith being on him.

There will be technical violations, but no right-minded court in Christendom would take away a man's permit for a technical
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violation of law. Notice of the time and place for the hearing upon an application for a permit should be given, both in the newspapers in the town or village where the pharmacist proposes to make the sales, and also by posting the same in a public place in said ward or village. Such notice to be given at least thirty days before the time appointed for the hearing; at which time the prosecuting attorney of the county shall appear for the people, and make full investigation of all the acts done by the applicant for the permit. At such hearing, if it appear that an unusual amount of sales in large quantities, or under suspicious circumstances, have been made, then the permit should not be renewed. I am also persuaded that the amount of liquor permitted to be sold should be of a very small quantity, unless in a very few excepted cases, as for example, where alcohol is purchased for the purpose of baths, and where the same is to be used for fuel or in the arts, and in those cases the pharmacist should be required to make no sales to persons unless they are thoroughly identified. He should also be required to make a special certificate setting forth the reasons why so large a quantity was sold at one time, with such detail that the state's attorney, or any other person, if he sees fit, can examine into the facts therein stated and ascertain their truthfulness. If it should be found, upon inquiry, that such statement was in any manner false, the pharmacist should be subject to prosecution for perjury, the statement thus made being considered as given under an official oath, which oath should be administered at the time of securing his permit. He should be required to state in the affidavit thus made that he would in good faith obey all of the laws with reference to the sale of intoxicating liquors.

The actual experience of the druggists indicates that they are sometimes made the victims of their own friends, and are induced to sell a pint, or even a quart, of whiskey for a beverage rather than medicinal purposes. Not wishing to impugn the motives of the purchaser, they thus become the victims of good fellowship. If they were confronted with the fact that in each and every instance where sales in as large quantities as that I have just mentioned were made, a falsely written statement as to the causes for the same would subject them to the possibility of being prosecuted for perjury, I think violations of this description, at least in a measure, would be prevented.

Accurate account of the amount of liquor purchased and sold by the pharmacist should be kept, and the amount and extent of the business thus hedged about, so that full inquiry concerning the same could be had at any time. Of course, if a pharmacist is going into the business of selling whiskey, as a beverage, and does not make any records, he thereby loses his status as a pharmacist, becomes an ordinary blind-pigger, and should be dealt with accordingly. I believe in dealing with the pharmacists that the law officers of the state should proceed upon the assumption that they are obeying the law. If they find, however, that their faith has been misplaced, then more stringent measures can follow, such as arrest and trial—or closing up the premises under injunctional methods.

In the last analysis, if liquor is to be sold for the excepted purposes, there must be some place found, or some person secured, in whose hands it will be safe to permit such sales, and I am fully persuaded that with the amendments to our law as here suggested, together with others which might be added upon more mature reflection, the best system would be secured.

The objection which comes to the method of selling for the excepted purposes upon a physician's prescription I understand to be that it invites the giving by physicians of blank prescriptions. The possibility of detecting the unlawful issuance is hedged about with great difficulties. It entirely relieves the druggist from any responsibility. All he has to do is to see that he has a prescription, when his protection is complete.

The development of the prohibitory liquor law must of course be gradual. Methods of enforcement become matured when conditions are met, and new conditions are constantly arising by reason of the possibility of evasions of the law. The pharmacist who sells liquor does not do it in the open fashion which appears in the saloon. Naturally the prosecuting officer makes his first attempt at enforcement as against what is in actual sight. In our state such has been the case, and the attention of the prosecuting officers has not been directed toward the unlawful sale by the druggists, as perhaps it should have been. More vigorous efforts are being put forth as against the criminal pharmacist at this time, and the sentiment of the people is becoming aroused, so that in all human probability the next few years will produce vast changes

in the number of persons violating the law through apparent legal right to sell. When a few more druggists go to jail and pay heavy fines, and a few persons who have purchased liquor of druggists and committed perjury in order to get it, are on their way to the penitentiary, violators of law will become aroused to the fact that there are at present penalties existing which ought to command their attention, respect and obedience.